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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE: FRIESEN, GARRY D.)

SERIAL NO: 10/020,342)

FOR: IMPROVED TRAILER FOR
TRANSPORTING BULK SEED
BOXES)

APPEAL NO. _____

FILED: December 12, 2001)

GROUP ART UNIT: 3652)

To the Commissioner of Patents and Trademarks
Mail Stop Appeal Brief - Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs:

In response to the Examiner's Answer dated November 1, 2004, Applicant submits the following Reply Brief on Appeal in triplicate.

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents referred to as enclosed therein are being deposited with the U. S. Postal Service in an envelope as "Express Mail Post Office to Addressee" addressed to: Commissioner of Patents, P. O. Box 1450, Alexandria, VA 22313-1450, prior to 5:00 p.m. on 30th day of December, 2004.

Patricia E. Wilson

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The first primary issue on appeal is whether claim 1 is obvious over the combination of U. S. Patent No. 6,092,974 to Roth in view of U. S. Patent No. 1,675,701 to Fitch and over U. S. Patent No. 5,465,829 to Kruse in view of Fitch. The second primary issue on appeal is whether claim 10 is obvious over U. S. Patent No. 6,425,728 to Ehlers in view of U. S. Patent No. 3,868,083 to Titcombe. The Examiner's Answer briefly addresses both of these issues, though the Examiner's arguments are insufficient to support the conclusions that claims 1 and 10 are obvious over the prior art.

I. THE COMBINATIONS OF EITHER ROTH OR KRUSE WITH FITCH DO NOT MEET THE CLAIM LIMITATIONS.

Specifically, Applicant's claim 1 requires "guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed". These guide plates are much different than those shown in Roth, Fitch or Kruse. In the Final Office Action, the Examiner acknowledged the Applicant's specific claim language of "guide plates inclining upwardly and outwardly" are not shown by Roth and Kruse (see Final Action, pages 2 and 3). Moreover, in the Final Office Action, the Examiner characterized the teaching of Fitch to be a bracket having inner surfaces which incline upwardly and outwardly from the bed (Final Office Action, page 2). It is clear in Figure 5 of Fitch that the brackets do not extend beyond the perimeter of the bed, as required by claim 1.

However, in his Answer, the Examiner has now changed his analysis of Fitch from that which is clearly shown in Fitch to a broader "concept" of an "outwardly angled bracket to position and center the container on the bed" (Answer, page 4). This is an overly broad

mischaracterization of the teaching of Fitch, and is impermissible hindsight by the Examiner. All Fitch teaches is a bracket at the perimeter edge of the bed with an inwardly sloping surface. Nowhere in Roth, Kruse nor Fitch is it taught that the bracket extend outside the perimeter edge of the bed, pursuant to claim 1. Therefore, the § 103 obviousness rejection should be reversed with regard to claim 1.

II. THE COMBINATION OF EHLERS AND TITCOMBE DO NOT MEET THE CLAIM LIMITATIONS.

The Examiner's Answer focuses on the "general teaching" of Titcombe, rather than the exact structure of Titcombe, to modify Ehlers (Answer, page 5). The Examiner states that there is no reason to incorporate the complicated Titcombe structure in the Ehlers apparatus. This admission defeats a § 103 rejection. But the Examiner then concludes that Titcombe's general teaching of a pivotal lock bar can be utilized to modify Ehlers. In short, a general concept in a prior art reference is not a clear and particular objective teaching sufficient to satisfy § 103. See In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999). Moreover, neither Ehlers nor Titcombe teach or suggest a lock bar spaced outwardly from the perimeter edge in an unlocked position and inwardly from the perimeter edge in the locked position, as required by claim 10. Furthermore, the Examiner's Answer makes no mention of the impossibility to position the lock member 24 of the Titcombe patent outside the bed perimeter or that the resulting combination of Titcombe with Ehlers would not extend outwardly beyond the perimeter edge in the unlocked position, as required by claim 10.

Therefore, the Examiner's analysis of Titcombe is erroneous and the rejection to claim 10 should be reversed.

III. CONCLUSION

For the above-stated reasons, and for the reasons set forth in Applicant's Appeal Brief, Applicant respectfully requests reversal of the decision of the Examiner and allowance of the application.

No fees or extensions of time are believed to be due in connection with this Reply Brief; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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